

ISLAND COUNTY HEARING EXAMINER

| | | |
|---|---|---------------------|
| RE: Preliminary Plat Alteration |) | File No. PLA 040/12 |
| |) | |
| Applicant: James and Carolyn Patterson) |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| |) | AND DECISION |

SUMMARY OF APPLICATION AND DECISION

APPLICATION: The Applicants, James and Carolyn Patterson, have requested Preliminary Approval of a Plat Alteration in order to adjust the internal and external boundaries of a recorded long plat.

DECISION: Preliminary Approval for the Plat Alteration is granted, subject to the conditions set forth in the Staff Report.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing on March 7, 2013.

I.

PRELIMINARY INFORMATION

Applicant: James and Carolyn Patterson

Property Location: 5421 Woodward Ave
Freeland, WA
South Whidbey Island

Assessor's Parcel No(s): S8538-00-00001-0 through S8538-00-00006-0

Applicable Ordinances, Statutes and Regulations:
Land Divisions – ICC 16.06 & RCW 58.17

Plat Alterations – ICC 1606.170
Rural Residential Zone - ICC 17.03.070
Land Use Standards - ICC 17.03.180
Critical Areas – ICC 17.02

SEPA: Determination of Non-Significance (DNS)

Publication: April 5, 2012, Whidbey Examiner

Mailing of Notice to Applicant: March 30, 2012, Notice of Complete Application

Sign Posted: April 5, 2012

Mailing of Staff Report: November 15, 2012

Date of Application: 03/01/2012

Hearing Date: March 7, 2013

Exhibit Log:

1. Staff Report
2. Land Development Permit Application, received 3/1/12
3. Zoning quarter section map, no date
4. Legal Description of Lots 1 through 6 in Patterson Plat, received 3/1/12
5. Application for Long Plat Alteration, no date
6. List of owners and parcel numbers within 300 ft. of project, no date
7. Recorded Long Plat No. PLP 268/07, received 3/1/12
8. Patterson Plat Map, received 3/1/12
9. Patterson Plat Map, received 3/29/12
10. Patterson Plat Map, received 7/26/12
11. Request for Comment and Site data, dated 3/30/12
12. Letter from Aneta Hupfauer to Brad Johnson, dated 4/27/12
13. Letter from John Bertrand to Brad Johnson, dated 4/30/12
14. Letter from John Bertrand to Brad Johnson, dated 7/10/12
15. Letter from Aneta Hupfauer to Brad Johnson, dated 8/16/12
16. Party of Record letter from Andy Campbell, received 2/27/12
17. Notice of publication of the Whidbey Examiner, dated 4/5/12
18. Affidavit of Posting the Public Notice Sign, received 4/5/12
19. Affidavit of Publication, received 4/10/12
20. Notice of Incomplete Application from Virginia Shaddy for Brad Johnson to Sound Planning Services, dated 3/21/12
21. Notice of Complete Application from Virginia Shaddy for Brad Johnson to Sound Planning Services, dated 3/30/12
22. Letter from Brad Johnson to Larry Kwarsick with attach memos, dated 5/30/12
23. Letter from Larry Kwarsick to Brad Johnson, received 7/26/12
24. Letter from Paula Bradshaw to Larry Kwarsick, notifying of hearing, dated 11/5/12
25. Letter from Paula Bradshaw to Larry Kwarsick, with attached staff report, dated 11/15/12

26. Email from John Bertrand to Paula Bradshaw, RE: Exhibit "C" 2 of 2, PLA 040/12, dated 12/3/12
27. Email from James W. Patterson to Paula Bradshaw, RE: Exhibit "C" 2 of 2, PLA 040/12, dated 12/3/12
28. Email from Paula Bradshaw to Larry Kwarsick, Brad Johnson, waterworks@whidbey.com, and esominder@yahoo.com, RE: 040/12 PLA Patterson @ Campbell-Hearing Examiner hearing, dated 12/5/12
29. Affidavit of Publication of Public Hearing, dated 11/22/12
30. Letter from Paula Bradshaw to Larry Kwarsick, RE: PLA 040/12, dated 12/13/12
31. Letter from Paula Bradshaw to Larry Kwarsick, RE: PLA 040/12, dated 2/8/13
32. Email from James W. Patterson to Paula Bradshaw, RE: For information: RE: 040/12, dated 2/6/13
33. Email from James W. Patterson to Paula Bradshaw, RE: Actions relative to PLA 040/12 & County, dated 2/8/13
34. Email from Brad Johnson to esominder@yahoo.com, Paula Bradshaw, and Johnson Bertrand, RE: Island County Plat Alteration-PLA 040/12, dated 2/11/13
35. Email from Paula Bradshaw to waterwork@whidbey.com, RE: Island County Plat Alteration-PLA 040/12
36. Email from James W. Patterson, to Brad Johnson, Paula Bradshaw, and John Bertrand, RE: Island County Plat Alteration-PLA 040/12, dated 2/11/13
37. Memo from Larry Kwarsick to Michael Bobbink, Island County Hearing Examiner, received 2/27/13 with exhibit 38 attached.
38. Revised Patterson Plat Map, received 2/27/13.
39. Memorandum from John Bertrand, Public Works to the Island County Hearing Examiner regarding exhibit # 38.
40. Email from Andy & Terri Campbell to Michael Bobbink, Island County Hearing Examiner, received 3/4/13.
41. Memo from Brad Johnson to Michael Bobbink, Island County Hearing Examiner, dated 3/4/13.
42. Package of documents submitted by Andy Campbell on 3/5/13:
 - a. Campbell/Patterson Contract Addendum, dated 9/2/11.
 - b. Letter with attached Staff Report (Exhibit # 1 in this hearing Examiner file) from Brad Johnson to Andrew & Terri Campbell, dated 10/17/12.
 - c. Letter from John Bertrand to Brad Johnson, dated 11/28/12.
 - d. Email dated 12/3/12 from John Bertrand to Brad Johnson, dated 12/5/12 with forwarded Email from James Patterson to John Bertrand, discussion exhibit "C"(of the Island County Staff Report).
 - e. Vote to Amend C C & R's of Long Plat No. PLP 268/07 S6655-00-10001-0 [RE: PLA 040/12], dated 2/6/13.
 - f. Email from Andy Campbell to Paula Bradshaw & Brad Johnson (Exhibit # 40 in this file).
 - g. Memorandum from Brad Johnson to Michael Bobbink, dated March 4, 2013 (Exhibit # 41 in this Hearing Examiner file).
 - h. Series of 7 black & white photocopies of pictures regarding curb extension.
 - i. Declaration of Covenants, Conditions, and Restrictions for Patterson Plat, No. PLP 268107, dated 12/29/10 AFN 4287798.
 - j. Road Maintenance Agreement dated 10/15/08, AFN 4238315.
43. Email from Andy Campbell to Paula Bradshaw explaining the group Exhibit # 42.

- 44. Access Permit APW06-0392, issued 10/23/06 from Public Works.
- 45. Access Permit PW12-0030, issued 2/27/12 from Public Works.
- 46. Affidavit of Publication in the Whidbey Examiner, dated 3/2/13.

HEARING TESTIMONY

List of those who testified:

Brad Johnson
Island County Planning & Community Development
P.O. Box 5000
Coupeville, WA 98239

Larry Kwarsick
Sound Planning Services
P.O. Box 581
Langley, WA 98260

Robert H. Pederson, Director
Island County Planning & Community Development
P.O. Box 5000
Coupeville, WA 98239

Andy Campbell
5421 Woodard Ave.
Freeland, WA 98249

James W. Patterson, Ph.D.
5315 NW Daniels St.
Vancouver, WA 98663

John Bertrand
Island County Public Works
P.O. Box 5000
Coupeville, WA 98239

II.

The Applicants, James and Carolyn Patterson, are requesting Preliminary Approval of a Plat Alteration, which will adjust internal and external boundaries of a recorded Long Plat.

Andrew and Terri Campbell own Lot 1 of the plat. James and Carolyn Patterson own Lots 2 thru 6 of the Patterson Plat. All of the owners of lots in the plat have signed the Plat Alteration Application. Both Mr. and Mrs. Patterson and Mr. and Mrs. Campbell appeared at the public hearing on this matter.

After discussion at the public hearing, both the Patterson's and the Campbell's agreed to the proposed Plat Alteration as set forth in Exhibit B, attached to the Staff Report, and subject to the conditions recommended by Island County Planning and Community Development in the Staff Report.

The Staff Report prepared by Planning, Exhibit No. 1 in the Hearing Examiner file, contains the Findings of Fact made by Staff. The Findings of Fact set forth in the Staff Report are supported by the record as a whole and are hereby adopted by the Hearing Examiner as Findings of Fact herein by this reference. A copy of the Staff Report is attached to this Decision.

III.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

Island County Planning has concluded that the Preliminary Plat Alteration proposed is consistent with applicable Island County Platting and Zoning Regulations, RCW 58.17, and other applicable County regulatory standards. The Hearing Examiner concurs in Staff's Conclusions of Law. The requested Plat Alteration should be approved, subject to the Conditions of Approval set forth in the attached Staff Report.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

Preliminary Plat Alteration Approval is hereby granted to the Applicants, approving alteration of the Patterson Plat, PLA 040/12, as shown in the Plat Map attached to the Staff Report as Exhibit B, and subject to the conditions set forth in the Staff Report, a copy of which is attached hereto.

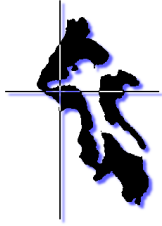
Entered this 14th day of March, 2013, pursuant to authority granted under the laws of the State of Washington and Island County.

MICHAEL BOBBINK
Island County Hearing Examiner

APPEAL PROCESS:

This decision of the Hearing Examiner shall be a final and conclusive decision unless within fourteen (14) days following the mailing of such decision a written statement of appeal is filed with the Island County Board of Commissioners by the applicant, a Department of the County, or Party of Record, who is also an Aggrieved Person. Said statement shall set forth any alleged errors and/or the basis for appeal and shall be accompanied by a fee pursuant to the fee schedule adopted by the Board; provided that such appeal fee shall not be charged to a department of the County or to other than the first appellant ICC 16.13.100.b; ICC 16.19.190.

The decision of the Hearing Examiner in this matter shall be a final and conclusive unless a written statement of appeal is filed with the Board of Island County Commissioners within (14) calendar days following this decision, in accordance with the appeal procedures set forth in ICC 16.19 190, WAC 173-27 (Shoreline Civil Penalties), or Chapter 16.21 ICC (Shoreline Administration); or is appealed in accordance with RCW 90.58.180 (Shorelines Hearings Board Appeals).



ISLAND COUNTY PLANNING & COMMUNITY DEVELOPMENT

Robert H. Pederson, AICP
Director

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STAFF REPORT & RECOMENDATION PRELIMINARY LONG PLAT ALTERATION – TYPE III PLA 040/12 ALTERATION OF PLP 268/07

I – PROJECT SUMMARY

The applicants (James and Carolyn Patterson) have requested preliminary approval of a Plat Alteration in order to adjust the internal and external boundaries of a recorded long plat. After a thorough review of the application materials, Island County has determined that the applicant's request is consistent with applicable Island County land use, platting and environmental regulations.

II – PERMIT DATA

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|----------------------------------|---|
| Permit Type | PLA (Preliminary Plat Alteration) |
| Permit Number | PLA 040/12 |
| Complete Application Date | 3/30/2012 |
| Decision | Approved with conditions |
| Applicant/Owner | James & Carolyn Patterson (lots 2-6) Andrew & Terri Campbell (lot 1) |
| Agent | Larry Kwarsick, Sound Planning Services |

III – SITE DATA

| | |
|-----------------------------------|---|
| Address | 5421 Woodward Ave Freeland, WA |
| Location | South Whidbey Island |
| Parcel Number(s) | S8538-00-00001-0 through S8538-00-00006-0 |
| Area of existing parcel(s) | .35 - .80 AC +/- |
| Number of proposed lots | N/A (Plat Alteration) |
| Zone Designation | RR (Rural Residential) |
| RAID Designation | Freeland |
| Allowable Density | 3DU/AC |

| | |
|--------------------------------|---|
| Critical Areas/Overlays | Wetland, Fish & Wildlife Habitat, Critical Drainage, Bald Eagle Habitat |
|--------------------------------|---|

IV – STAFF CONTACTS

| Department | Name | Phone | Email |
|----------------------|----------------|--------------|--|
| Planning | Brad Johnson | 360-678-7972 | b.johnson@co.island.wa.us |
| Public Health | Aneta Hupfauer | 360-678-7995 | anetah@co.island.wa.us |
| Public Works | John Bertrand | 360-678-7812 | Johnb@co.island.wa.us |

V – REGULATORY COMPLIANCE SUMMARY

| Regulatory Requirement | Complies (Y/N) | Comments |
|---|-----------------------|---|
| Land Divisions – ICC 16.06 & RCW 58.17 | Yes | Proposal is consistent with Washington State and Island County platting regulations |
| Plat Alterations – ICC 1606.170 | Yes | Proposal complies with all applicable plat alteration standards |
| Rural Residential Zone - ICC 17.03.070 | Yes | Proposal is consistent with all applicable RR zone requirements and standards |
| Land Use Standards - ICC 17.03.180 | Yes | Proposal is consistent with all applicable land use standards |
| Public Works | Yes | Proposal can comply, with conditions of approval – see exhibit “C” |
| Public Health | Yes | Proposal can comply, with conditions of approval – see exhibit “D” |
| Shoreline Development | Yes | Project site is located outside of shoreline jurisdiction |
| Critical Areas – ICC 17.02 | Yes | Project is consistent with all applicable critical areas regulations |

VI – FINDINGS

Only major issues, errors in the development proposal, and justification for conditions of approval are discussed below. Staff finds that all other aspects of the proposed development are in compliance with applicable laws, rules, codes, and requirements.

A – Procedural Requirements

1. The applicant is proposing to revise a previously approved long plat (PLP 268/07 – Patterson Plat). Specifically the applicant is proposing to alter the a number of internal and external plat boundaries in order to correct previous mapping and survey errors.
2. Island County Code (ICC 16.06.170) and Washington State Law (RCW 58.17.060) require that any alteration to a recorded plat be processed as formal plat alteration unless the proposed alteration can be considered a Boundary Line Adjustment as defined in ICC 16.06.040 and RCW 58.17.040. Because the proposed alteration involves relocating external plat boundaries and modifying easements created through the original plat, the proposed alteration cannot be processed as a Boundary Line Adjustment and is therefore subject to platting review.
3. Because plat associated with the proposed alteration contains more than four lots it meets the definition of a subdivision. In accordance with Island County Code (ICC 16.06.170.A.4) preliminary subdivision alteration proposals shall be processed as Type III applications and are subject to review and approval by the Island County Hearing Examiner. Accordingly, this application was processed in accordance with the procedures set forth in Island County Code for Type III applications (ICC 16.06.170).
4. As required by Island County Code, notice of the proposed plat alteration was published in a local paper and a notification was posted on the subject property. Following the publication and posting, a fourteen day period was provided for public comment. During this time, Island County received one comment. This comment was submitted by Andy Campbell. It should be noted that Mr. Campbell owns property within the plat boundaries and signed plat alteration application.
5. Washington State law (RCW 58.17.215) requires that all owners of property within a subdivision subject to a proposed alteration be notified of the alteration proposal. The Patterson Plat contains a total of six lots;

James and Carolyn Patterson own lots two through six, and Andrew and Terri Campbell own lot one. Both parties signed the plat alteration application and are therefore aware of the proposed alteration.

6. As noted above, the proposed plat alteration is classified as a Type III decision and is subject to a hearing before the Island County Hearing Examiner. In accordance with Island County Code (ICC 16.19.170) notice of the proposed hearing will be published in a local paper and provided to the parties of record at least ten days prior to the hearing date. In addition, notice of the proposed hearing will also be mailed to the parties of record. In this case the parties of record include only the two parties who signed the plat alteration application.

B – Platting Standards

1. This recommendation adopts by reference the findings, conclusions, and conditions associated with PLP 268/07, except as specifically amended herein.
2. Island County Code (ICC 16.06.170.A.3) states that the procedures and requirements applicable to land divisions shall also be applicable to alteration requests. Accordingly, this application was reviewed for compliance with the approval criteria applicable to preliminary subdivision applications set forth in ICC 16.06.110.
3. Island County finds that the proposed preliminary plat alteration is consistent with the approval criteria enumerated in ICC 16.06.100.
4. Washington State law (RCW 58.17.140) requires that a final plat meeting the state and local requirements be submitted within seven years of the date of preliminary approval. Accordingly, a condition has been added to this decision requiring that a final plat be submitted and recorded within seven years of the date of this decision.

C – Zoning

1. The Patterson Plat is located in the Freeland RAID (Rural Area of Intense Development). The Freeland RAID allows for a maximum density of three dwelling units per acre and a minimum lot size of 14,500 square feet (ICC 17.03.075). Although the plat alteration proposed by the applicant will result in small changes to the lot areas within the plat, each of the resulting lots will be at least 14,500 square feet. Specifically, the smallest lot in the plat will be 15,983 square feet in size. Therefore, Island County finds that the proposed plat alteration will comply with the density and lots size requirements established by Island County Code.

D – Critical Areas

1. Based on a preliminary review of Island County critical areas maps, it does not appear that there are any regulated critical areas within the plat boundaries. Further site specific analysis will be required as a condition of any subsequent development.

E – Public Works & Engineering

1. The proposed plat alteration has been reviewed by Island County Public Works. As noted in the attached memo (see exhibit “C”) Island County Public Work has determined that with appropriate conditions of approval, the proposed alteration will comply with all applicable land development, engineering and survey requirements.

F – Public Health

1. The proposed plat alteration has been reviewed by Island County Public Health. As noted in the attached memo (see exhibit “D”) Island County Public Health has determined that the proposed alteration will comply with all applicable health and sanitation requirements.

VII – SEPA THRESHOLD DETERMINATION

Determination: Determination of Non-Significance (DNS)

Pursuant to WAC 197-11-340, Island County has determined that this proposal will not have a probable significant adverse impact on the environment. An Environmental Impact Statement is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with Island County. This information, and the entire project file, is available for review by the public upon request.

Note: SEPA Threshold Determinations are Administrative decisions of the Director and shall be final and conclusive unless within fourteen (14) days following mailing of the Director’s decision, a written statement of appeal, accompanied by a fee except when submitted by a County Department, is filed with the Hearing Examiner by the Applicant, a Department of the County, or any Aggrieved Person. Hearings on SEPA appeals shall be combined, and heard concurrently with the underlying permit application.

VIII – RECOMMENDATION TO ISLAND COUNTY HEARING EXAMINER

Based upon the above review, Island County concludes that the preliminary plat alteration proposed by the applicant is consistent with Island County's platting and zoning regulations, as well as all other applicable regulatory standards, and hereby recommends that the Island County Hearing Examiner approve preliminary plat alteration PLA 040/12 subject to the following conditions:

IX – RECOMMENDED CONDITIONS OF APPROVAL

1. Preliminary Subdivision or Preliminary Subdivision Alteration approvals shall expire if all requirements for final approval have not been fulfilled and the Final Subdivision or Final Subdivision Alteration recorded within seven (7) years of the date of the preliminary approval. Provided that any judicial appeal filed and accepted for review after preliminary approval shall automatically stay the time periods referenced above until a final decision on the appeal is rendered.
2. The final plat map must substantially conform to the approved preliminary plat map (see attached exhibit "B"), except that the final plat map may reflect any changes authorized by this decision.
3. This decision adopts by reference the findings, conclusions, and conditions associated with Island County subdivision approval PLP 268/07, and shall not be construed to alter or abridge any previously imposed conditions or authorize any changes other than those specifically identified in this report.
4. The final plat map must conform to the standards identified in Island County Code ICC 16.06.120.
5. Prior to final plat approval the requirements and conditions noted in the attached memo from Island County Public Works must be addressed (see attached exhibit "C").
6. Prior to final plat approval the requirements and conditions noted in the attached memo from Island Health Public Health must be addressed (see attached exhibit "D").

SIGNED THIS _____ DAY OF OCTOBER 2012

Brad Johnson, Senior Planner
Island County Planning & Community Development

Attachments:

Exhibit "A" – Vicinity Map
Exhibit "B" – Preliminary Plat (as recommended for approval)
Exhibit "C" – Island County Public Works Memo
Exhibit "D" – Island County Public Health Memo